ABSTRACT
China ratified the Convention on the Rights of Persons with Disabilities (CRPD) in 2008. Hong Kong, as a Special Administrative Region of China is thus also obligated to implement this treaty. CRPD Article 13 protects the right to access to justice for people with disabilities, including Deaf and Hard-of-Hearing (DHH) individuals. In Hong Kong, research exploring the implementation of CRPD Article 13 in practice is lacking. This study utilizes in-depth interviews and case studies of deaf individuals, a case worker, and a barrister as its methodological approach. It aims to investigate the implementation of CRPD Article 13 within the criminal justice system in Hong Kong through the lived experiences of DHH individuals. The findings of the research suggest that there are significant gaps in the implementation of CRPD Article 13 for DHH individuals in Hong Kong. Institutional, communicative, and attitudinal barriers highlighted in the CRPD are identified in the experiences of DHH individuals with the legal system, indicating an insufficiently comprehensive system to ensure equal rights for DHH individuals.

KEYWORDS
Convention on the Rights of Persons with Disabilities (CRPD), access to justice, deaf, disabilities, human rights, discrimination, equality, procedural accommodations, access
Introduction

People with disabilities (PWDs) are often denied fair and equal treatment before courts and law enforcement bodies due to various barriers. Prejudice by law enforcement officers may lead to cases involving victims with disabilities not being thoroughly investigated, and the complicated procedures and legal language may make it challenging for some PWDs to navigate the system, seek redress, and defend themselves. In some states, restrictions exist that prevent PWDs from serving as jurors or holding positions as lawyers and judges.

The UN Convention on the Rights of Persons with Disabilities (CRPD) came into force in 2008. It is the first human rights treaty in the 21st century that addresses disability rights comprehensively. CRPD Article 13 protects the right to “access to justice”.

There has been research on access to justice issues for Deaf and Hard-of-Hearing (DHH) individuals worldwide. For instance, Vernon and Miller found that deaf people in the USA are at risk of serious injustices throughout various stages of legal processes. Despite the protection provided by the American Disability Act, professionals within the system often lack awareness of communication issues faced by DHH individuals, leading to misunderstandings or ignorance of legal requirements. Olsen and Kermit highlighted language and communication obstacles faced by deaf people within the Norwegian criminal justice system. Despite the presence of interpreters, problems such as the weakened reliability of deaf individuals and the loss of control over their narratives during statement-taking were identified. Schwartz and Elder explored reasonable accommodation, the importance of sign interpreters, and the value of sign language and direct communication between solicitors and deaf clients based on interviews with Deaf participants and one hearing ally in Northern Ireland. However, research focusing on DHH individuals’ access to justice in Hong Kong is lacking.

Furthermore, CRPD Article 13 and its domestic implementation have not been extensively discussed in Hong Kong. Prior to 2022, the Equal Opportunities Commission (EOC), the national human rights institution responsible for enforcing human rights laws, did not incorporate the CRPD into its work program.

2. The “uppercase Deaf” is deliberately used here describe people who identify as culturally Deaf – they are actively engaged with the Deaf community, use sign language and embrace Deaf culture; “Hard of Hearing” is used to here to describe deaf people who do not identify themselves as culturally Deaf and often does not use sign language as their preferred language. In referring to the informants of this research, their preferred term to describe their identities are used.

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anti-discrimination laws in Hong Kong, had not specifically addressed this issue in their research and guidelines, as their policy research and code of practices primarily focused on discrimination in education and employment. The topic was also insufficiently discussed during Hong Kong’s CRPD reporting cycles, with issues related to Article 13 only briefly mentioned in the Concluding Observations of the first two reporting cycles in 2012 and 2015. The specific situation of the DHH community in Hong Kong regarding access to justice has never been examined.

Since 2019, when Hong Kong experienced mass social movements, the media has exposed more cases involving various PWDs and their treatment by the police and legal professionals. These cases have highlighted the lack of disability awareness within the criminal justice system, such as maltreatment during detention and failure to provide accommodations during trials. While there has been increased empathy toward PWDs and calls to protect their right to a fair trial, studies examining the right of access to justice in Hong Kong using CRPD Article 13 as a framework have been absent. Additionally, there is a lack of open information on how PWDs are treated in the judicial system and the arrangements made to accommodate their needs.

This article aims to address these research gaps and contribute to the broader discussion on the right of PWDs to access justice by studying the situation in Hong Kong, where the CRPD is applied. It explores the implementation of CRPD Article 13 in Hong Kong through the lived experiences of DHH individuals. The obligation of states to ensure equal access to justice for PWDs applies to all legal proceedings, including civil, criminal, and administrative procedures. This study focuses specifically on the situation of DHH individuals in criminal proceedings, which is particularly relevant to their right to a fair trial.

The paper begins by introducing the context of Hong Kong, explaining the meaning of access to justice in the CRPD, and outlining the research methodology. It then highlights major gaps in the implementation of CRPD Article 13 identified through interviews and case studies involving DHH individuals navigating the criminal justice system. The article concludes by reflecting on key areas that require improvement to strengthen the implementation of CRPD Article 13 in Hong Kong.

7. Committee on the Rights of Persons with Disabilities “Concluding observations on the initial report of China, adopted by the Committee at its eighth session (17–28 September 2012)” (11 October 2012) UN Doc CRPD/C/CHN/CO/1.
8. For example, “聾障學生否認襲警 法庭審訊欠支援 官: 辯方有責任自行安排 (A hearing-impaired student denied police assault offence, lack of support provided during trial; magistrate said it is the defendant side’s responsibility to arrange support)” Inmediahk.net (Hong Kong, 14 August 2020) <https://www.inmediahk.net/node/1076459> Accessed 5 April 2021; “智障人士接連遭判囚 邵家臻: 法庭落後 未照顧被告需要 大律師: 官普遍對病患認識不深 (Consecutive cases of people with ID sentenced to prison; Siu-Ka Chun: The Court is behind the standard, and the defendants’ needs are not taken care; Barrister: Most judges do not have a deep understanding on different medical situations)” Stand News (Hong Kong, 27 January 2021).
The Context of Hong Kong
As China ratified the treaty in 2008 and made the convention applicable in Hong Kong, Hong Kong has the obligation to implement the rights recognized in the CRPD. Hong Kong is a dualist, common law system where courts cannot directly apply unincorporated international standards. Basic Law Article 39 gives full effect to the ICCPR and ICESCR, and Article 25 provides for “equality before the law” for all Hong Kong citizens and other persons in the region. Equality clauses, the right to a fair and public trial, and procedural rights of persons convicted are also provided in the Bill of Rights Ordinance (BORO) Articles 1, 22, 10, and 11, respectively. The ICCPR and BORO are often relied upon and given due consideration in litigations involving constitutional rights. However, whether the CRPD is read into these constitutional provisions remains questionable. Unlike CEDAW, which has been used to inform the interpretation of the Sex Discrimination Ordinance, the court has reiterated in the few disability cases litigated that the CRPD is purely “promotional and aspirational”, and the court is “not obliged to read domestic laws in line with the CRPD”.

Another relevant piece of legislation is the Disability Discrimination Ordinance (DDO), which prohibits acts against a person on the grounds of disability in prescribed areas of activities such as employment, education, provision of goods, services, and/or facilities, and access to premises. The acts of discrimination prohibited in the DDO include direct discrimination, indirect discrimination, harassment, and victimization. However, it does not establish the responsibility to provide reasonable accommodation. In other words, the denial of reasonable accommodation does not constitute disability discrimination in the DDO. In its 2012 concluding observation on Hong Kong, the CRPD Committee suggested that the government review its civil and criminal laws to “make mandatory the necessity to establish procedural accommodation for those PWDs who intervene in the judicial system”. In 2016, the EOC submitted a Discrimination Law Review to the government, which recommended the introduction of a distinct duty to make reasonable accommodations for PWDs. However, the proposal was not accepted by the HKSAR Government. Not including the “denial of reasonable accommodation” as discrimination in the DDO has been a major loophole that makes the legal enforcement of access to justice in line with the CRPD difficult.

13. Committee on the Rights of Persons with Disabilities (n 7).
In terms of the development and implementation of disability and rehabilitation policies and services, the Rehabilitation Advisory Committee (RAC) is an advisory body of the government on matters relevant to the well-being of PWDs. It is consulted by the Secretary of Labour and Welfare on all important aspects of rehabilitation, and its members are appointed by the government. The committee is also responsible for promoting and monitoring the implementation of the CRPD in Hong Kong by formulating the Persons with Disabilities and Rehabilitation Programme Plan (RPP), which sets out strategic direction and different measures to address the needs of PWDs. In 2010, a working group on promoting sign language was also formed under the RAC to provide recommendations to the government on different areas such as promoting sign language to the public, sign language training in the public sector, sign interpretation services in public hospitals, and sign interpretation training and accreditation systems.

According to the government census published in 2021, there are about 314,800 persons with varied levels of hearing difficulties in Hong Kong. Of these, 266,900 people reported that they had “some difficulty” in hearing, 44,300 reported they had “a lot of difficulty” in hearing, and 3,600 people reported that they “could not hear at all”. Among the population with hearing difficulties, around 11 percent of them are using hearing aids/cochlear implants. In terms of the use of sign language, 6,000 people in Hong Kong reported that they used sign language in their usual communication. In terms of education level, 65.8 percent of the population categorized as “people with hearing disabilities” (people with “a lot of difficulty in hearing”
and people who “could not hear at all”) received only primary or pre-primary schooling, 26.2 percent had received secondary schooling, and only 8.1 percent of them had attained post-secondary education. Deaf people in Hong Kong are heterogeneous in terms of age, hearing thresholds, communication methods, and educational backgrounds.

The Meaning of Access to Justice Under CPRD

Article 13
The concept of “access to justice” has developed through international human rights laws. Throughout the negotiation and establishment of different UN human rights treaties, including the most recent CRPD, various components of access to justice have developed, broadening its scope of application.

The CRPD is the first international human rights convention that enshrines an explicit right to access to justice. Article 13, “access to justice”, requires states to ensure effective access to justice for PWDs on an equal basis with others, including through the provision of procedural and age-appropriate accommodations to facilitate their effective role as direct and indirect participants in all legal proceedings, and promote appropriate training for those working in the field of the administration of justice.

“Access to justice” entails the effective access to the systems, procedures, information, and locations used in the administration of justice. This requires positive actions by states. For example, to ensure PWDs’ access to the law so that they can determine how they interact with the legal system to assert their rights and have opportunities to claim justice when their rights are violated, states have to combat systemic disability bias, promote disability rights, and guarantee PWDs’ rights and redress for victims in national laws.

To ensure PWDs’ effective participation in the legal system, states have to make physical environments, processes, and information related to the administration of justice accessible. PWDs’ access to legal representation, legal aid, and independent legal advice should also be ensured. Information on the CRPD and the rights of PWDs should also be promoted and provided to PWDs. Various accommodations

20. Ibid.
21. CRPD article 13.
24. Lord (n 22) 46.
26. See Committee on the Rights of Persons with Disabilities (CRPD Committee), “Concluding observations on the initial report of Kuwait” (24 September 2019) UN Doc CRPD/C/KWT/
and support, such as assistance for PWDs to exercise their legal capacity and procedural and age-appropriate accommodations, have to be provided.\textsuperscript{27} In the case of DHH individuals, typical accommodations needed include sign interpretation, oral transliteration to facilitate lip-reading, live captioning, adjustment of speaking pace, use of simple language, and hearing loop systems.\textsuperscript{28}

Access to justice is not only achieved through removing barriers to ensure that PWDs can access legal proceedings and seek and obtain remedies equally but also through actively promoting the involvement and participation of PWDs in the administration of justice.\textsuperscript{29} For example, by repealing laws that prevent PWDs’ participation as legal professionals and jurors,\textsuperscript{30} implementing specific measures that provide favorable conditions to enable PWDs to enter the profession and take up responsibilities within it,\textsuperscript{31} providing accommodations in the recruitment process and when a PWD employee of the justice sector performs their duties,\textsuperscript{32} and closely consulting PWD organizations.\textsuperscript{33}

CRPD Article 13 also imposes a duty on states to promote appropriate training for those working in the field of the administration of justice. The CRPD Committee has frequently recommended state parties provide compulsory training to relevant stakeholders to raise their level of disability awareness.\textsuperscript{34}

\textsuperscript{27} UNGA “Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities” (2017) UN Doc A/HRC/37/25, para 34.
\textsuperscript{28} Special Rapporteur on the rights of persons with disabilities (n 9) 16.
\textsuperscript{29} UNGA (n 27) para 5, 12.
\textsuperscript{30} Flynn (n 23) 140.
\textsuperscript{31} Ibid.
\textsuperscript{32} Ibid.
\textsuperscript{33} See CRPD Committee, “Concluding observations on the combined second and third reports of Australia” (15 October 2019) UN Doc CRPD/C/AUS/CO/2-3; and CRPD Committee, “Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland” (3 October 2017) UN Doc CRPD/C/GBR/CO/1.
\textsuperscript{34} Highlighted in almost two-thirds of the concluding observations across years, see CRPD Committee, “Committee on the Rights of Persons with Disabilities”, “Concluding observations on the initial report of Estonia” (1 April 2021) UN Doc CRPD/C/EST/CO/1; CRPD Committee, “Concluding Observations in relation to the initial report of Djibouti” (14 September 2021) UN Doc CRPD/C/DJI/CO1; and CRPD Committee, “Concluding Observations in relation to the initial report of El Salvador” (13 September 2013) UN Doc CRPD/C/SLV/CO/1.
Methodology
The methodological approach of this study involves in-depth interviews and case studies of four deaf individuals, a case worker, and a barrister. The aim of these interviews and case studies is to understand the experiences and observations of deaf individuals and hearing individuals working with deaf clients in the legal system.

The caseworker is a well-known and outspoken advocate for DHH rights. His experience and observations as a support person in various legal processes provide useful information on the current system and the obstacles faced by DHH people. The barrister, who has experience working with different DHH clients, was referred to the author by the case worker. The DHH interviewees were referred to the author by members of the local Deaf community. They were deliberately selected to include people with different communication needs and varied experiences in the legal system. A more detailed profile of the interviewees can be found in Table 1. The interviews were semi-structured, and examples of questions are provided in Table 2.

These interviewees and case studies were chosen because of their diverse personal backgrounds and roles in the justice system. The author of this paper is a sign language interpreter in Hong Kong who has established a close working relationship with the local Deaf community and field professionals, enabling her to directly contact all potential informants.

All interviewees were provided with informed consent forms that indicated the purpose of the study, the procedures, confidentiality, data retention, voluntary participation, and the option to withdraw from the study. Signed copies of the consent forms were collected before the interviews took place.

The interviews took place in private meeting rooms or at the professionals’ workplaces and lasted approximately 1.5 hours. The interviews with the case worker, the barrister, and one hard-of-hearing person were conducted in Cantonese, audio recorded, and subsequently transcribed into Cantonese texts. The interviews with the three other Deaf individuals were conducted in Cantonese and Hong Kong Sign Language. A sign interpreter was present in those sessions to facilitate the conversation between Hong Kong Sign Language and Cantonese. These sessions were video and audio recorded and transcribed into Cantonese texts. As the author is a sign language interpreter herself, she cross-checked the signing data when transcribing the data to ensure interpretation accuracy. The data was categorized according to the issues, problems, systems, and actors involved, and different themes were subsequently identified. Relevant documents from interviewees, such as their communications with the judiciary, were also recorded with consent. Ethical approval for the study was obtained from the Human Research Ethics Committee at the University of Hong Kong.

This study is not a survey. It does not seek to provide a generalization or a representation of the situation of access to justice for the entire local DHH community. Rather, it is an in-depth study of cases and individual stories aimed at understanding the experiences, struggles, and concerns of DHH people in the legal system, providing valuable context for the analysis of CRPD rights. The following section will highlight current gaps and problems in Hong Kong’s implementation of CRPD Article 13.
Table 1 Profile of Interviewees

<table>
<thead>
<tr>
<th>Interviewee</th>
<th>Profile</th>
</tr>
</thead>
<tbody>
<tr>
<td>CW</td>
<td>A 62-year-old hearing caseworker from a local deaf association who has served the deaf community for over 20 years. He has accompanied and supported deaf clients in various situations, including legal processes and medical appointments.</td>
</tr>
<tr>
<td>D1</td>
<td>A 21-year-old hearing-impaired person who is profoundly deaf and wears hearing aids. He uses spoken language and lip-reading for daily communication. From 2020 to 2021, he experienced detention in police stations, trials in Magistrates’ Courts, serving sentences in correctional centers, and bail applications and appeal in the High Court due to criminal offenses.</td>
</tr>
<tr>
<td>D2</td>
<td>A 37-year-old deaf person who is profoundly deaf and uses Hong Kong Sign Language and lip-reading for daily communication. In 2010 and 2020, respectively, he experienced communication with the police and court trials due to breaching traffic regulations.</td>
</tr>
<tr>
<td>D3</td>
<td>A 37-year-old deaf person who is profoundly deaf and uses Hong Kong Sign Language for daily communication. He was arrested twice for criminal offenses in 2018 and 2021 respectively.</td>
</tr>
<tr>
<td>D4</td>
<td>A 44-year-old deaf person who is profoundly deaf and uses Hong Kong Sign Language for daily communication. She received notification from the judiciary about adding her name to the jury list but was “exempted” from jury service after the judiciary learned that she was deaf.</td>
</tr>
<tr>
<td>B1</td>
<td>A 29-year-old hearing person who has worked as a barrister for almost four years. He has represented deaf clients in three cases, two of which are related to criminal offenses, and one is civil. Two of the cases are still ongoing.</td>
</tr>
</tbody>
</table>

Table 2 Sample of interview questions

1) For DHH people
   - Have you ever been arrested/prosecuted/got involved in legal procedures/sentenced? When did that happen? Tell us about your experience.
   - Were there any difficulties navigating through the system? Do you think that yourself and your community have sufficient knowledge of this? Why?
   - Did you have a legal representative? Were your needs and disability understood? Were there any difficulties working with legal professionals?
   - Was the communication at all stages/with different parties (police officers, lawyers, magistrates, staff, prison officers) effective? Why?
   - Were accommodations provided at all stages? What were they? How were they requested and decided?

2) For caseworkers from deaf associations
   - Have you ever worked with DHH people? What was your role in that case?
   - What kind of support did you provide? Were there any difficulties when you were trying to offer support?
   - Were there any barriers posted on your deaf client/on you/on their legal representatives that you could observe during the whole process?
3) For Practitioners

- Have you ever worked with DHH people? What was your role in that case? Could you share with us the experience?
- Were there any difficulties when you were providing service/support?
- Were you aware of the needs of your client? Have you ever received training on disability awareness?
- Did you take any extra actions to accommodate his/her needs? What were those actions? Were there any challenges when you tried to accommodate your deaf client? What was the most difficult part?
- Regarding court trials/procedures, could accommodations be provided? How were they requested and decided? Are there any procedures and guidelines?
- Were there any barriers posted on your deaf client/on you that you could observe during the whole process?
- What do you think about the justice system? Is your deaf client's right to a fair trial protected? How can it be improved to better accommodate the needs of PWDs?

Gaps in the Implementation of CRPD Article 13
Access to Justice – The DHH Experience

Institutional, communicative, and attitudinal barriers posed to DHH people in the legal system are observed in the experiences of DHH individuals who participated in this study. Currently, there is no comprehensive and proactive system in place to respond to the diverse needs of DHH individuals in the legal system. There is a lack of measures to ensure the accessibility of legal information and legal services, procedures to identify the needs of PWDs and provide necessary support, monitoring and complaint mechanisms to ensure the quality of accommodation services offered, and systematized training to increase disability awareness among judicial actors and legal awareness among DHH individuals. As a result, there is a significant gap in the implementation of the right to access justice in line with CRPD standards in Hong Kong.

Lack of Access to Legal Information

The interviewees in this study have highlighted that DHH individuals are minimally informed about legal procedures, legal aid, and legal services. CW, a caseworker at a local Deaf association, has been involved in cases concerning DHH clients, including labor disputes, consumer rights, law enforcement problems involving officers from other governmental departments, and medical incidents. Over the years, CW has observed the confusion and helplessness experienced by these individuals when dealing with various issues.

Most of them were very confused [...]. My role is to make use of my knowledge and my personal network to help them. (CW)

Effective access to legal information is crucial for enabling PWDs to be aware of and defend their rights.\(^\text{35}\) The confusion and helplessness experienced by CW’s

\(^{35}\) UNGA (n 27) para 21.
clients reflect the lack of accessibility of existing systems for DHH individuals, which hinders their ability to independently navigate various dispute resolution mechanisms.

Legal aid has to be made accessible, and the government should ensure that these services and information are available through multiple channels, facilitating effective access for all individuals.\(^{36}\) Although legal aid is available in Hong Kong,\(^{37}\) and the duty lawyer service is provided in all magistrates’ courts,\(^{38}\) the mere existence of these schemes does not guarantee effective accessibility for DHH individuals.

CW once encountered a deaf person in court who was completely unaware of the availability of legal representatives and did not know that they could seek assistance from a duty lawyer. CW accompanied that deaf individual in finding a duty lawyer. In terms of accessing legal aid, the deaf client required CW’s support in completing the complicated application form in Chinese and gathering the necessary supporting documents.

**Lack of a Mechanism to Identify Needs and Provide Support**

States should establish a clear process for assessing the needs of PWDs and providing appropriate procedural accommodations.\(^{39}\) CW, an experienced support person, and B1, a legal practitioner, both express uncertainty regarding the procedures for requesting and arranging accommodations, as well as identifying the appropriate contact person.

> When the police find that an individual is deaf, they should take the initiative to arrange a sign interpreter [...] a safer way is to write a letter to the court clerk to notify them that the defendant is Deaf [...] There isn’t a standard procedure or guidelines. (B1)

> I guess it should be the lawyer telling the court Registrar [...] or if the case was serious, the police officers should have indicated that the case involved a DHH person, but there were cases of deaf people who have already taken statements before going to the court, and the police should have already learned that the defendant was a signing deaf, but sign interpretation was not provided in subsequent court proceedings. (CW)

DHH interviewees who have participated in court proceedings have also expressed uncertainty regarding the process of requesting accommodations. D1, for instance, has attended court hearings on multiple occasions and faced difficulties in obtaining the necessary accommodations each time. Being aware that the accommodations provided were ineffective, D1 was uncertain about how to address this issue.

36. Ibid.
37. The service covers the District Court, the High Court, and the Court of Final Appeal. Applicants who pass both the means and merits tests will be eligible for legal aid, and can obtain legal representation in proceedings before the courts; information can be accessed at https://www.lad.gov.hk/eng/las/overview.html
39. Special Rapporteur on the rights of persons with disabilities (n 9) 18.
In the first mention, they did not provide me with any hearing device, but they arranged a person to reiterate what the magistrate said. The second mention was held in another court, and they said they could not arrange manpower. I did not know what the magistrate was saying — there was nothing I could do — I just nodded my head. Before the trials, my lawyer helped me ask the court if they had an FM system. I was told that the court does not have this. Eventually, they arranged a male interpreter to reiterate what people said to a mic that was connected to a receiver attached to my hearing aid, but he spoke too fast, and I could not hear clearly. I did not know what I should answer... They provided me with this arrangement — maybe this was the only way they could come up with? I felt very helpless, and I did not know what I could do to change the situation. (D1)

In November 2022, the EOC published a guide titled “Equal Access to Justice for Persons who are Deaf and Hard of Hearing”. This guide outlines how different parties can facilitate communication between DHH and hearing individuals during judicial processes. Shorty before the release of the guide, the judiciary updated its webpage on “Access for People with Disabilities”. The webpage introduces various barrier-free access facilities and services available, as well as “Special Facilities and Services for Litigants, Witnesses, and legal practitioners requiring Prior Arrangements”. These include infra-red headphones and audio-guide-like receivers, sign interpreters, masks with transparent windows, audio typing services, wheelchair access and designated areas in specific courtrooms, and special document formats. A standard form is provided for individuals to request assistance in court proceedings or hearings, and the final decision rests with the presiding Judge or Judicial Officer.

The mere existence of a “standard form” is insufficient to ensure the provision of appropriate accommodations for PWDs who have requested such services. In England and Wales, the “Equal Treatment Benchbook” serves as a key reference to guide judges in ensuring true equal treatment under the law. However, in Hong Kong, despite the availability of an accommodation request form, it is still unclear whether there are established procedures to guide presiding judges or judicial officers in determining the type of accommodation to be provided. The lack of understanding among criminal justice professionals regarding the linguistic, educational, and cultural characteristics of DHH individuals often contributes to perpetuating injustice. Furthermore, it is uncertain if there are systems in place to monitor the quality of accommodation services.

42. Judicial College, Equal Treatment Bench Book (February 2021).
Accommodations should be individualized to meet the specific needs of PWDs. It is important to ensure that an individual’s needs are understood and taken into consideration when determining the appropriate accommodations in different legal settings. It is important to note that the “procedural accommodations” required by the CRPD in access to justice are not limited by disproportionality, as the right to access justice is fundamental for the effective enjoyment and exercise of all rights. The absence of accommodations in judicial procedures can also constitute a serious violation of the right to a fair trial.

In 2020, the judiciary website only mentioned the provision of sign interpretation services for Deaf individuals, but sign language interpretation may not be helpful in all cases involving DHH individuals. This was evident in D1’s case. As a hearing-impaired person with no knowledge of sign language, he required other forms of communication accommodation. However, there was no available information on how individualized accommodations would be arranged by the judiciary at that time.

D1, who was profoundly deaf, had an “oral interpreter” during his trial who repeated every sentence spoken in court to him in Cantonese. However, he still faced difficulties in understanding questions directed at him due to the fast pace of speech, and at the beginning, the interpreter’s mask made lip-reading impossible. To avoid complications, he simply answered “yes” and “understood” to all questions without a clear understanding of what was being said to him. In another trial, he was seated at the back of the courtroom, making it difficult for him to hear the magistrate due to the physical distance. The failure to assess his needs and provide effective communication accommodations deprived him of his right to a fair trial.

Infection control measures implemented due to COVID-19 have posed significant barriers to communication and access to information for DHH individuals involved in the justice system. According to D2, aside from impeding lip-reading, which is crucial for comprehending information for DHH individuals, mask-wearing and the use of transparent face shields have made understanding signs during trials more challenging and tiring. These communication difficulties were not addressed or resolved during the decision-making stage or throughout the trial.

The current process for assessing an individual’s needs within the court system remains uncertain. D1 believed that his individual communication needs would be better supported if he could directly communicate his situation with judicial officers.

“It will be better if the court can directly communicate with me so that I can directly tell the court my hearing situation and disabilities and my specific needs. If the court did not know my specific situation, it will affect the trial and that is unfair to me since the judge will not know my problems. For example, I will sometimes mishear words, and the court may have to work out the best way to support us.” (D1)

45. UNGA (n 27) para 35.
The establishment of effective communication has been a major concern expressed by all interviewees. This issue must be taken seriously. A criminal justice system that consistently provides a lower standard of communication to DHH citizens can result in incorrect conclusions, wrongful convictions, and a general lack of trust in the judicial system among deaf individuals.46

**Arbitrariness in the Provision of Accommodations**

There is a lack of consistent practice and guidance regarding the accommodation of DHH individuals with diverse communication needs at the law enforcement level. The establishment of effective communication largely relies on the awareness of individual officers, leading to uncertainties and arbitrariness. The experiences of the interviewees have demonstrated that without systematic assurances, communication barriers are prevalent in various law enforcement settings.

D2 was once fined for violating traffic regulations. However, he was unaware of the letters sent to him and unable to receive phone calls from the police.

> It is weird that they expect themselves to be able to contact me through phone calls. I am deaf [...] It would be better if they used SMS to remind me to pay the fine, then everything can be settled smoothly. (D2)

D2 also found that communication with police officers at police stations was “not so good” as he could only communicate with them through his mom.

> They spoke so fast, and I could not hear them. They asked my mom to tell me what they had just said, and they just talked to my mom. I don’t prefer relying on my mom [...] I want to settle the issue by myself directly. (D2)

D3 was arrested and taken to the hospital in 2015, but a timely interpretation was not provided to help him understand the charges against him.

> They handcuffed my hand to the bed [...] I did not know what happened, but I just signed all the documents. (D3)

D3 was detained again in 2020, and during this detention, the police communicated with him through written notes. D3 possesses strong Chinese language skills, making written communication suitable for him during the detention procedures. However, he expressed concerns regarding DHH individuals who may struggle with written Chinese proficiency.

> For some deaf people who have weaker written language skills and could not fully express themselves through writing, this will be a huge barrier [...] They may not understand the police’s writing and may lead to misunderstandings [...] (D3)

In terms of case reporting, sign interpretation was not provided in any of the cases where CW supported his clients in reporting crimes to the police.

46. Olsen and Kermit (n 4) 23.
They waited for so long, and sign interpretation was still not provided in the end. They left and the incident went nowhere. In another incident, the police said that they did not have a sign interpreter and asked them to go to another police station. I am now handling about ten cases of scamming. When they report crime, no sign interpretation was ever provided. (CW)

In terms of the situation in detention centers, B1 encountered a complete breakdown in communication when meeting with a detained deaf client.

When I met him in the detention center for the first time, I learned that he was not allowed to have his hearing aid with him. It is the battery for the hearing aid that is not allowed. (B1)

One can imagine how challenging it is for an oral deaf individual to communicate and receive information in prison without their hearing aid. The situation was further exacerbated by strict infection control policies that severely limited the possibility of lip-reading. During the 45-minute meeting, B1 could not effectively communicate with his client.

A plastic board was placed between us, and the plastic board was wrapped with a plastic sheet. It was very opaque. What made it worse was that the client did not have his hearing aid with him, which means that he could only rely on lip-reading. I pulled down my mask, hoping to let him read my lips, but the correctional officer required me to wear my mask properly because of infection control. (B1)

Regarding prison visits, which is a fundamental right for all detained individuals, there is no available information on the arrangements for accommodations.

Paper and pencils are provided, but prison visits are limited to 15–30 minutes. What can be communicated with writing will be very limited. Can they arrange an interpreter? Will they allow visitors to bring along an interpreter? Can extra visiting time be allowed? All are unknown. (CW)

The situation faced by DHH individuals in the Hong Kong legal system is similar to what Byrne et al. discovered in Northern Ireland. Deaf people’s engagement with various justice institutions is perceived as isolated incidents that require reactive redress. This not only causes potential delays in accessing legal remedies for DHH individuals but also violates civil rights such as the right to a fair trial, the right to be tried without undue delay, and due process rights, including being promptly informed of the nature and cause of the charges against them.

Lack of an Effective Monitoring and Complaint System

An effective monitoring mechanism is crucial for promoting equal access to justice for PWDs. To ensure the appropriateness and quality of accommodation facilities and services, formal procedures should be established to monitor and address complaints regarding them. However, the Hong Kong justice system lacks effective monitoring and complaint mechanisms specifically related to procedural accommodations.

47. Schwartz and Elder (n 5) 1003.
48. Special Rapporteur on the rights of persons with disabilities (n 9) 25.
Concerns regarding the quality and professional ethics of sign interpreters were recurrent themes when D2 and D3 recounted their experiences in court and police stations, respectively. D3 had an unpleasant encounter during a statement-taking session with the interpreter arranged by the police.

_The interpreter told me “I will help you; don’t worry; I can help you plead” [...] What appeared on the statement paper was not what I have expressed [...] While the police had talked a lot, the interpreter signed only briefly, apparently missing out a lot of content._ (D3)

Interpreters play an indispensable role in ensuring DHH individuals’ access to justice and their participation in police interviews.49 The interpreter is the only person in the room who could directly communicate with the deaf party in sign language. Misconduct of this nature can significantly impact the procedural rights of DHH individuals. However, no complaint mechanisms exist specifically addressing sign interpreters. The judiciary has responded to a complaint of sign interpreter misconduct by stating that “sign interpreters are not employees of the judiciary and provide services on a freelance basis. The judiciary has no comment regarding their service provision in other governmental departments or organizations”.50

Furthermore, if a defendant wishes to appeal based on errors in sign interpretation, video recordings of the interpreter’s signing would be crucial in presenting the case. However, currently, only transcripts and audio recordings are provided, and no video recordings of sign interpreters are available. This makes handling complaints, evaluating court sign interpreters, and appealing based on sign interpretation errors extremely challenging.

There is also a lack of mechanisms to monitor and adjust the accommodations provided during legal proceedings.

_In the trial the DHH defendant was given a headphone, which is connected to a mic to which the oral interpreter repeated every sentence to. Later I learned that putting that headphone on top of his hearing aid will result in sound interference, which made it more difficult to hear clearly. But no one had ever addressed this problem throughout the trial._ (B1)

When it comes to judicial actors working with individuals providing accommodations, both B1 and D2 experienced frustration due to the inability to clarify suspected miscommunications between the party and the interpreter in court settings, severely impacting communication.

49. Olsen and Kermit (n 4) 29.
50. 關震海 “審視法庭手語傳譯制度首次上立法會 建制派議員指檢討無迫切性 (Reviewing the court’s sign interpretation system for the first time in the Legislative Council; Pro-China Councilors said such review was not urgent)” _HK FEATURE_ (Hong Kong, 23 November 2020) <https://hkfeature.com/local/%E5%AF%A9%E8%A6%96%E6%B3%95%E5%BA%AD%E6%89%8B%E8%AA%9E%E8%AD%AF%E5%88%B6%E5%BA%A6%E9%A6%96%E6%AC%A1%E4%B8%8A%E7%AB%8B%E6%B3%95%E6%9C%83-%E5%BB%BA%E5%88%B6%E6%B4%BE%E8%AD%B0%E5%93%A1%E6%8C%87/> Accessed 21 June 2022.
I suspected there was lost in translation [...] but the judge did not let me clarify with the interpreter and said that “we assume that the interpreter is correct” and “just don’t talk to me about the interpreter. Just ask the witness and let the witness answer”. (B1)

I looked at my friend (on the public seats), who signed to me that the signing of the interpreter was wrong! The judge told me not to look at my friend and asked me to focus on the sign interpreter [...]

I raised my hand, but I was told that I could not directly talk to the judge and could only talk to the interpreter. (D3)

Due to difficulties in communicating with the interpreter and the frustration of being unable to resolve the issue, D2 ultimately abandoned his defense and pleaded guilty.

I gave up and pleaded guilty [...] this was unfair to me as a deaf person. Things were unclear. What I wanted to express was not delivered. (D2)

**Lack of Awareness Among Judicial Actors**

Justice actors who possess an understanding of the situations faced by DHH individuals and are fully aware of their needs play a critical role in ensuring effective access to justice, as attitudinal barriers found in these justice system professionals often negatively impact how laws, policies, procedures and practices are implemented. However, the experiences shared by informants indicate that judicial actors often have low levels of deaf awareness and, in some cases, hold hostile attitudes toward DHH citizens.

CW often found himself labeled as a “troublemaker” by law enforcement officials because of his support for DHH individuals as a friend. He also observed misunderstandings and misconceptions among public officers. For example, some DHH individuals were accused of being “fake” simply because they were able to speak or nodded before the interpreter finished the sentence.

Their nods do not necessarily mean that they fully understand, but they (law enforcers) just did not believe me [...] some DHH people had the tendency to nod even though they did not understand, because of their experience growing up – they were “trained” to give a quick response, and were told that not responding quick enough means that you are stupid and would be scolded – these were some problems and oppression in their education and schooling (CW)

B1 recalled a case where he filed an appeal application for a DHH client and reviewed transcripts from the client’s previous trial. He discovered unresolved communication problems and the DHH defendant was made difficult by the magistrate.

The DHH defendant’s lawyer requested a support person to repeat what was said in the court to the defendant. The chief magistrate said that “the defendant is a local and speaks Cantonese, why does he need an interpreter – if you request an interpreter, you are wasting the judiciary’s resources”. Wordings like “are you going to pay the bill yourself?” were used. When the defense lawyer told the

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51. UNGA (n 27) para 59.
magistrate that they could find the support person themselves, the chief magistrate responded “How can I trust you? You are not those sex crime victims, the person you find will not be a support person [...] I don’t think there is such a need”. (B1)

Similar lack of understanding and awareness about DHH people’s situations was also found among prison staff. B1 represented a DHH client who was accused of attacking prison staff.

Because of the pandemic, everyone was wearing a mask. My client could not read the lips of the staff who was speaking to him. Out of desperation, my client tried to slightly pat the prison staff’s elbow52 [...] The staff stepped back, a scratch was therefore left on the staff’s arm. This was a communication problem, but my client was regarded as violent and was sent to a psychiatric center for two weeks. (B1)

In detention and correctional centers, D1 found that officers’ attitudes and treatment toward DHH individuals varied. Some officers ignored D1 when he asked them to repeat themselves due to unclear hearing, while others scolded him for not promptly following instructions and asked, “Are you deaf?” D1 did note that officers in the correctional center were generally more aware of his situation and were accommodating, removing their masks to repeat what they said and writing for him.

Apart from prejudice-based discrimination, legal professionals often lack the capacity to respond in a timely manner to the specific needs of DHH individuals.

The prosecutor saw that I was getting tired and could not get the question, so they repeated the question for me again and again [...] But the magistrate was impatient and required me to answer “agree or disagree” right away. I was scared and just answered “agree” blindly [...] In another proceeding, the magistrate was so nice – she ordered the interpreter to remove the mask, so that I could lip-read and know what’s going on. Also, she allowed me to get out of the dock and sit in the front. On that day an oral interpreter was also arranged. (D1)

Due to the magistrate’s lack of understanding and awareness, D1 provided an answer without comprehending the question during his first trial. When he tried to clarify later, the magistrate did not accept the possibility of him mishearing the questions, instead accusing D1 of being self-contradictory, exaggerating, and making up lies.

If the judge is alert, it will be better. If the judge is not aware of this or does not understand what happened to the defendant, the situation will be worse. It depends. (B1)

The lawyers involved in D1’s case understood his communication problems and made adjustments to their usual practices. For example, by speaking slower and allowing more time for meetings, removing masks during meetings, and allowing sufficient time for D1 to read the written submissions. However, they were not fully aware of the most appropriate accommodations when negotiating with the court.

They told the magistrate about my hearing situation, but they did not tell the judge that I could not read lips clearly when people are wearing masks so there is a need of removing masks. (D1)

52. A usual way for DHH people to get another person’s attention.
D1 felt that although his lawyer understood his communication problems and attempted to negotiate accommodations with the court, they could not accurately present his detailed situation and the necessary support.

One of the government’s duties under CRPD Article 13, which pertains to awareness raising, is to provide compulsory training to judicial actors and other professionals involved in the legal system who may engage with PWDs. The lack of awareness among legal practitioners and key actors in the justice system can be attributed to insufficient training on disability rights and awareness.

In Hong Kong, training programs organized by The Judicial Studies Board and local institutions are attended by judges and judicial officers. However, out of 633 training activities between 2008 and 2021, only four of them were related to PWDs. These disability-related seminars and conferences were organized solely by local universities with no specific training related to DHH individuals in judicial settings.

No training. Not even an hour of continuous development course [...] we do not have such training in our professional development and university. (B1)

Lack of Legal Awareness Among DHH Community

States also have an obligation to ensure the accessibility of information on disability rights and provide training to PWDs to increase their legal awareness, empowering them to navigate the system effectively. The lack of information on PWD’s rights and how to invoke them before courts and authorities create barriers for them in seeking remedies. Based on the interviews conducted, it was observed that DHH individuals generally have low levels of legal understanding and awareness of their rights.

Issues related to criminal or civil procedures usually involve complicated information and require informed decisions from the party. CW and B1 noted that some DHH individuals lacked a full understanding of the legal implications of their responses.

In legal contexts, I could not put words into their mouths or make statements on behalf of them. Sometimes problems arise in their narratives. I had no choice but to stop the conversation, and explained things again to them. (CW)

I was cross-examining my client, but his answers did not match with previous instructions [...] the judge said “just let him say whatever he wants to”, and then he continued to say whatever came to his mind – he seemed not to be aware that this is a trial procedure in the court. (B1)

53. UNGA (n 27) para 14.
55. UNGA (n 27) para 21.
The level of legal understanding and awareness of the CRPD varied among DHH individuals and was generally insufficient. While D3 was fully aware and refused to provide a statement without the presence of a lawyer and a sign interpreter, D1 signed their statement despite feeling that something was wrong.

*If I said something wrong, and if the judge made a judgment based on that, I would be disadvantaged. I had to answer carefully [...]. Do you remember the incident where a deaf person was sent to a psychiatric center because of miscommunication and misunderstanding? That’s why I know that having a sign interpreter is very important.* (D3)

*When they asked me to sign the statement, I felt that something was wrong, but I did not know what’s wrong, because I am not very familiar with law.* (D1)

After recalling their experiences in the criminal justice system, three DHH individuals admitted that they were not fully aware of their rights, the importance of effective communication, and the options available during legal procedures at the time.

*I did not know about this (the possibility of using written communication in trials) at that time, and the lawyer did not know we could actually request and arrange that [...].* (D1)

*That was an “authorized” interpreter, but the interpretation just did not work. I should have asked for replacing that interpreter with another one.* (D2)

*I did not think of this at that time [...]. and I had no idea how things work and how to handle situations like this (the situation was that the interpreter acted unprofessionally) [...]. If the same thing happened again, I would stop and tell them that the interpretation does not reflect what I am saying.* (D3)

Gaps were also observed in terms of the knowledge and competence of the DHH community to access the justice system and understand how it functions, which may be attributed to the quality of education they have received. To ensure meaningful, effective, and equal access to justice, the needs of DHH individuals extend beyond procedural and communication accommodations. Multiple forms of support are necessary.

**Systematic Rejection of DHH People Serving as Jurors**

The CRPD Committee has highlighted the importance of jury duty as an integral part of civic life and the judicial system.\(^{56}\) They have consistently urged states to repeal laws that exclude PWDs from serving as jurors.\(^{57}\) However, in Hong Kong, there continues to be a systematic rejection of DHH individuals when it comes to fulfilling this civic responsibility.

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\(^{56}\) UNGA (n 27) para 57.

\(^{57}\) CRPD Committee, “Concluding Observations in relation to the initial report of Seychelles” (16 April 2018) UN Doc CRPD/C/SYC/CO/1; CRPD Committee “Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland” (3 October 2017) UN Doc CRPD/C/GBR/CO/1.
D4, a Deaf individual who communicates using Hong Kong Sign Language, received a notification from the judiciary in January 2022 stating that her name would be added to the list of jurors. In response, D4 submitted a letter to the High Court, attaching her hearing test report and disability registration card. She expressed her willingness to be placed on the list and inquired about the availability of sign interpretation and Chinese live captioning if she were to be summoned for jury duty. In early February, the judiciary responded by stating, “After considering your reasons provided in the letter, you are exempted from jury service.” D4 felt that she had been treated unfavorably due to her deafness and lodged a complaint with the EOC (Equal Opportunities Commission). In their reply, the EOC justified the exclusion by claiming that it was “prescribed by law”. D4’s experience highlights not only the insufficiency of the current system in ensuring the exercise of rights for DHH individuals but also the system’s rejection of their ability to fulfill their civil responsibilities as citizens.

Concluding Remarks
In its Concluding Observation on China (including Hong Kong and Macau) issued in 2022, the CRPD Committee noted the barriers faced by persons with hearing impairments in the justice system due to the lack of procedural accommodation and inaccessible information and communication in legal procedures. They specifically recommended the state party provide reasonable accommodation for illiterate persons with hearing impairments and to negotiate accommodations with applicants, such as providing audio and video transcriptions and interpreters proficient in natural sign language in courts. The committee also recommended the state party enhance professional development programs for judges, judicial officials, administrative professionals, and government officials to improve their understanding of the human rights model of disability and its domestic implementation.

These observations align with findings from research on DHH individuals’ access to justice in other jurisdictions. Institutional barriers faced by DHH individuals include the inability to comprehend the language used in judicial settings, the lack of accessible knowledge and transparency regarding the functioning of the law and the system, and the insufficient competence and knowledge among professionals in establishing effective communication with DHH individuals.

The major gap in the implementation of CRPD Article 13 in Hong Kong is not solely attributed to technical issues or the absence of specific services and programs.

60. Letter from the Judiciary to D4 (8 February 2022).
62. CRPD Committee, “Concluding observations on the combined second and third periodic reports of China” (10 October 2022) UN Doc CRPD/C/CHN/CO/2-3.
63. Ibid.
64. Ibid.
This study reveals an underlying issue: our existing justice system lacks awareness of the affirmative actions mandated by the CRPD, leading to a systematic exclusion of persons with disabilities. If the Hong Kong judiciary continues to remain unaware of the diverse needs of different people, it will result in a systemic deficiency that affects everyone from vulnerable groups.

“Access to justice is a right, not a privilege”. To achieve equality and inclusion of persons with disabilities, access must be ensured in all institutions and systems, including the justice system, which plays a pivotal role in safeguarding rights and maintaining societal functioning. The findings of this research provide a strong basis for better implementation of CRPD requirements in Hong Kong to advance social justice. Our justice system must respond to the call of the CRPD by establishing a proactive, holistic, and systematic approach to efficiently and effectively accommodate the diverse needs of DHH individuals and other persons with disabilities. This is a commitment that the Hong Kong government must fulfill in accordance with its CRPD obligations.